

Plaintiff contends that Defendants' motion to dismiss should be stricken because it was filed after Defendants answered the Complaint and Rule 12(b)(6) motions are supposed to be filed before answering the complaint. Defendants' Answers stated that Plaintiff failed to state a claim. [See dkt. ## 18, 19, 22.] Defendants' motion to dismiss also asserts that Plaintiff has failed to state a claim and is made in part under Fed. R. Civ. P. 12(b)(6).

A motion to dismiss for failure to state a claim can be included in an answer. Fed. R. Civ. P. 12(h)(2). A “12(b)(6) motion filed after an answer has been filed is to be treated as a 12(c) motion for judgment on the pleadings....” *McMillan v. Collection Prof’ls Inc.*, 455 F.3d 754, 757 n.1 (7th Cir. 2006). Therefore, the motion to dismiss should be converted to a Fed. R. Civ. P. 12(c) motion and the motion to strike should be denied.

Plaintiff seeks an extension of time within which to respond to Defendants’ Motion to Partially Dismiss Complaint until 14 days after the Court rules on *Plaintiff’s Motion to Strike*. In seeking the enlargement of time, Plaintiff relied on the fact that it had moved to strike the motion to dismiss. If the motion to strike were granted, no response would have been required. Under the circumstances, the request for additional time until after the Court ruled on the motion to strike was reasonable, and Plaintiff has requested a modest enlargement of time. The motion should be granted.

Accordingly, *Plaintiff’s Motion to Strike Defendants’ Rule 12(b)(6) Motion to Partially Dismiss Complaint as Untimely* [Dkt. #48] is **DENIED** and *Plaintiff’s Motion for Extension of Time to Respond to Motion to Partially Dismiss Complaint* [Dkt. #49] is **GRANTED**. Plaintiff’s response to the motion to dismiss is due 14 days from the date entered below.

SO ORDERED THIS DATE: 1/19/2016

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Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana